

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Reexamination of the Comparative Standards)	MM Docket No. 95-31
For Noncommercial Educational Applicants)	
)	
Association of America's Public Television)	
Stations' Motion for Stay of Low Power)	
Television Auction (No. 81))	
)	
To: The Commission)	

REPLY COMMENTS OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY

The New Jersey Public Broadcasting Authority (NJPBA), hereby files these Reply Comments in the above-referenced proceeding regarding the reexamination of the comparative standards for noncommercial educational (NCE) applicants. In support thereof, the following is shown:

1. NJPBA is the public broadcasting authority charged by the New Jersey General Assembly with the responsibility to provide public telecommunications services to all of the citizens of the State of New Jersey. NJPBA was established pursuant to the New Jersey Public Broadcasting Authority Act of 1968 for the purpose of creating and operating a statewide system of noncommercial educational broadcasting stations within the State. Consistent with its broad statutory responsibilities, NJPBA operates a statewide public television network and is the licensee of four full-service public television stations and several translator stations, all in the state of New Jersey. NJPBA is also the licensee of a statewide public FM network, which currently includes seven full-service facilities.

2. Through these facilities, which comprise the New Jersey public broadcasting network, NJPBA provides a wide range of noncommercial programming services for the benefit and enrichment of the residents of the state. NJPBA has sought to the extent practicable to provide statewide public radio service, but the fact of the matter is that reserved channel opportunities, for either full-service facilities or translator service, particularly in southern New Jersey, are severely limited by the existence of TV Channel 6 operating in Philadelphia, Pennsylvania. The lack of reserved channels may compel NJPBA to seek unreserved channels in the future as it attempts to provide effective statewide public radio coverage. With respect to public television service, translators in particular provide crucial coverage of the state in areas not served by NJPBA's full-service transmission facilities, and they will do so for the foreseeable future as the nation moves from the analog to the digital broadcast age. NJPBA is thus vitally concerned that the Commission's rules and regulations protect and preserve existing translator service and assure adequate opportunities to continue and expand such service to the state. In sum, without translators, NJPBA cannot serve the entire state of New Jersey in accordance with its legislative mandate, and NJPBA is likewise concerned that the Commission afford noncommercial educational licensees like NJPBA adequate opportunities to apply for FM channels in both the reserved and unreserved bands.

3. NJPBA has reviewed comments filed in this proceeding by other interested parties. As a general matter, NJPBA strongly supports the comments of Association of Public Television Stations (APTS), the Station Resource Group (SRG), Georgia Public Telecommunications Commission (GPTC) and others regarding the eligibility of NCE entities to apply for unreserved channels. In particular, as persuasively demonstrated

by these parties, Options 1 and 2 set forth by the Commission, which would effectively exclude NCE applicants from applying for unreserved channels, are contrary to Congressional intent, existing Commission policy and the public interest.¹ Further, NJPBA supports GPTC's proposal (GPTC Comments, pp. 5-7) for a relaxed version of Option 3, which would apply the same criteria to proposed reservation of existing vacant FM allotments as well as future allotments² and would not count religious and secondary FM translator services when assessing the need for noncommercial service in any particular community.

4. NJPBA likewise shares APTS' concern that the current licensing scheme does not either adequately protect existing NCE service provided by public television translator stations or provide opportunities for expansion to areas needing such service.

As the Commission is aware, TV translators present unique issues within the context of the instant proceeding inasmuch as they have no reserved spectrum. Moreover, the hundreds of translators currently providing cardinal public television service are vulnerable to extinction as a result of the nationwide transition from analog to digital television service. This circumstance arose in part due to the Commission's decision not to permit public television translators which rebroadcast flagship network public television service to secure Class A status. Translators are simply an essential component of nationwide public television service, providing coverage in mountainous rural areas and other areas not reached by full-service facilities.

¹ See APTS Comments, pp. 7-10; SRG Comments, pp. 5-7; GPTC Comments, pp. 2-5.

² That is, vacant or new allotments above Channel 220 could be reserved where a) the applicant could demonstrate that there is no available reserved spectrum to serve the community and b) the applicant would provide a first or second noncommercial educational service in the station's service area.

5. Under the circumstances, NJPBA urges the Commission to find that NCE translators are exempt from auctions, consistent with the analysis of APTS (APTS Comments, pp. 14-17). However, because translators operate on reserved channels, the Commission must do more in order to give full effect to the NPR decision. While the Commission has expressed concern that establishing NCE eligibility for TV translators might complicate its licensing scheme, as APTS observes (APTS Comments, pp. 17-18), it is in fact a simple matter to establish a separate category for such translators which will confirm their status as auction-exempt facilities. Any translator station associated with a full-service NCE station would qualify and could elect NCE status.

6. Further, NJPBA agrees with APTS proposals (APTS Comments, pp. 18-23) to provide for some limited additional opportunities to enhance existing NCE translator operations by expanding the current "displacement" policy and implementing needs-based priority processing. In this regard, NJPBA observes that the Commission's existing policy according priority processing to displacement applications has given NCE translator licensees one important means to preserve service. However, that policy governs only NCE translators displaced due to the DTV transition or the reallocation of Channels 52-69. NJPBA urges the Commission to extend priority NCE translator processing to NCE translator proposals to provide fill-in service due to gaps in analog or digital coverage, increased interference during the DTV transition, or coverage losses arising from combined analog/digital service should the Commission adopt such a scheme for the conversion of TV translators from analog to digital operations. Mutual exclusivity among "mixed" NCE and commercial translator proposals could be generally resolved by according a dispositive priority to NCE

translator applicants proposing first or second television NCE service to 10% of the population within the proposed NCE translator station's protected service contour. Mutual exclusivity among NCE translator applicants could be resolved through use of the Commission's point system currently applicable to full-service NCE proposals.

WHEREFORE, for the foregoing reasons, NJPBA respectfully urges the Commission to adopt NCE rules and policies consistent with the views expressed herein by implementing a relaxed standard for noncommercial entities to reserve vacant and new allotments, creating a class of NCE TV translators, and expanding priority processing of NCE TV translator proposals.

Respectfully submitted,

**NEW JERSEY PUBLIC BROADCASTING
AUTHORITY**

By: Malcolm G. Stevenson
Malcolm G. Stevenson

SCHWARTZ, WOODS & MILLER
1350 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
202/833-1700

Its Attorneys

June 17, 2002